

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**CUCINO CORPORATION.**

**Respondent.**

**Docket No. FMCSA-2009-0209<sup>1</sup>  
(Eastern Service Center)**

**ORDER ON BINDING ARBITRATION**

**1. Background**

On May 11, 2009, the Rhode Island Division Administrator for the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) to Respondent, Cucino Corporation, proposing a civil penalty of \$18,690 for alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, the NOC, which stated that it was based on an April 8, 2009 compliance review, charged Respondent with: a) one violation of 49 CFR 382.301(a), with a proposed civil penalty of \$4,580, for using a driver before the motor carrier received a negative pre-employment controlled substance test result; b) two violations of 49 CFR 382.305(i)(3), with a proposed civil penalty of \$4,630 per count, for failing to ensure that drivers are tested within the selection period; and c) one violation of 49 CFR 396.7(a), with a proposed civil penalty of \$4,850, for operating a motor vehicle in such a condition as to likely cause an accident or breakdown.<sup>2</sup>

Respondent replied to the NOC on June 9, 2009, admitting the violations and

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<sup>1</sup> The prior case number of this matter was RI-2009-0022-US1203.

<sup>2</sup> See Exhibit 1 to letter from the Field Administrator's Counsel, dated August 4, 2009 (Claimant's Consent).

requesting binding arbitration.<sup>3</sup> On August 2, 2009, Claimant, the Field Administrator for FMCSA's Eastern Service Center, consented to the Respondent's Request for Binding Arbitration. The request is granted.

## **2. Procedures**

The arbitration process will be conducted pursuant to FMCSA's published guidance on this subject.<sup>4</sup> The parties will work together to select an arbitrator and establish procedures that will govern the binding arbitration. A representative of FMCSA will contact Respondent to answer any questions it may have about the process, including the choosing of an arbitrator.

### **a. Options in Choosing the Arbitrator**

The parties may choose an arbitrator from the following sources:

1. Civilian Board of Contract Appeals Judges or representatives from other government agencies who have been trained in arbitration;
2. Uncompensated neutral parties from local communities; or
3. Compensated neutral parties from outside the government, whose costs are to be shared by agreement of the parties.

The selected arbitrator will assist the parties in developing procedures and preparing an Arbitration Agreement.

### **b. Arbitration Format**

Respondent may have attorney or non-attorney representation, or it may appear *pro se*, that is, it may represent itself in the arbitration proceedings. With the consent of

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<sup>3</sup> See Exhibit 2 to Claimant's Consent.

<sup>4</sup> See *Guidance for the Use of Binding Arbitration under the Administrative Dispute Resolution Act of 1996*, Docket No. FMCSA-2003-14794, 69 Fed. Reg. 10288, March 4, 2004.

both parties, the arbitrator may conduct hearings in person or by telephone, video conferencing, or computer.

Each party will present evidence supporting the penalty and terms of payment it considers appropriate. The evidence may not contest whether or not the violation occurred because Respondent has conceded the violation as a condition of arbitration. Neither written submissions nor oral argument may contain any reference to the amount of the civil penalty proposed by the party. At a time specified by the arbitrator, each party will present to the arbitrator and to the opposing party a sealed envelope containing the amount of its total proposed civil penalty and a proposed payment plan. Before opening the envelopes, the arbitrator will determine the appropriate civil penalty and payment plan based upon the evidence presented during the proceeding. The arbitrator will provide his or her determinations in writing to the parties. The arbitrator will then open the envelopes and select the civil penalty and payment plan that is closer to the arbitrator's determinations. The arbitrator has the discretion to select one party's proposed total civil penalty and the other party's proposed payment plan.

c. Maximum and Minimum Penalty Amounts

The parties may not propose an amount higher than the amount assessed in the NOC. There is no minimum statutory penalty for the violation.

d. Limited Appeals

The arbitration award is binding on the parties. Appeals from arbitration awards

are generally limited to fraud or misconduct in the proceedings. *See* Federal Arbitration Act, 9 U.S.C. § 10.

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

7.15.10

Date



# CERTIFICATE OF SERVICE

This is to certify that on this 16 day of July, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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